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**BEFORE THE  
Federal Communications Commission  
WASHINGTON, DC 20554**

**MAR - 4 1996**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

In the Matter of )

Interconnection Between Local )  
Exchange Carriers and Commercial )  
Mobile Radio Service Providers )

CC Docket No. 95-185

Equal Access and Interconnection )  
Obligations Pertaining to )  
Commercial Mobile Radio Service )  
Providers )

CC Docket No. 94-54

To: The Commission

**DOCKET FILE COPY ORIGINAL**

**Comments  
of the  
Rural Cellular Corporation**

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Dated: March 4, 1996

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| Commercial Mobile Radio Service  | ) |                      |
| Providers                        | ) |                      |

To: The Commission

**COMMENTS OF RURAL CELLULAR CORPORATION**

Rural Cellular Corporation ("RCC") hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission ("FCC" or "Commission") on January 11, 1996 in the above-captioned proceeding.

RCC is a publicly traded corporation licensed by the FCC to provide cellular telephone service in the Minnesota 1-Kittson Rural Service Area ("RSA"), Minnesota 2-Lake of the Woods RSA, Minnesota 3-Koochiching RSA, Minnesota 5-Wilkin RSA and the Minnesota 6-Hubbard RSA. As a cellular carrier, RCC interconnects its facilities with those of its local landline carriers so that mobile callers on its network may reach individuals on the landline network and vice versa. As a provider of commercial mobile radio service ("CMRS"), RCC will be directly affected by any rule changes adopted by the Commission that relate to local exchange carrier ("LEC")-CMRS interconnection arrangements.

On October 17, 1995, RCC met with the staff of the Commission's Wireless Telecommunications Bureau, urging the adoption of a "bill and keep" type approach to interconnection. Subsequent to that meeting, the Commission adopted the subject NPRM. In view of the impact on RCC of any rules adopted in this proceeding, and RCC's demonstrated interest in this proceeding, RCC appreciates the opportunity to respond to the NPRM. In accordance with the Commission's request, these Comments are formatted as requested in paragraph 133 and footnote 171 of the NPRM.

Rural Cellular Corporation  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline Section I - General Comments

**General Comments**

In establishing the principle of "mutual compensation", the Commission properly recognized the disparity in market power and inequality of interconnection compensation arrangements between LECs and CMRS providers. The FCC's establishment of the mutual compensation requirement, under which LECs must compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on LEC facilities, was a well intentioned attempt to ensure that CMRS providers and LECs recover their costs in terminating calls originating on the other provider's network.<sup>1</sup> Unfortunately, the mutual compensation requirement has been widely ignored in practice. RCC is unaware of any LECs that currently compensate CMRS providers for their role in terminating calls that originate on the LEC network. Due to the disparity in market power, CMRS providers on the whole have heretofore been grateful merely to receive interconnection from the LECs, and have generally not attempted to obtain enforcement of the mutual compensation obligation.

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<sup>1</sup> See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411, 1497-1498 (1994); The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd 2910, 2915 (1987), aff'd, Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369 (1989).

RCC commends the Commission for its recognition that the mutual compensation requirement has not resulted in the sharing of interconnection costs envisioned by the Commission. While the various pricing options discussed by the Commission in the NPRM, including "bill and keep", may remedy the ineffectiveness of the mutual compensation requirement by imposing specific compensation requirements on LEC-CMRS interconnection, RCC believes that its proposed compensation requirement (discussed in detail in Outline Section II(A)(3) below) will best serve the public interest. RCC believes that adoption of "bill and keep" on a temporary basis would result in a marked improvement over the current system under which LEC mutual compensation obligations are routinely ignored; however, RCC is concerned that, in light of pending access reform, advocating "bill and keep" for LEC-CMRS interconnection may result in a similar approach being adopted with respect to both interconnection between CMRS providers and interconnection between CMRS providers and interexchange carriers ("IXCs"). The adoption of a bill and keep type approach for either CMRS/CMRS or CMRS/IXC interconnection may prove detrimental to CMRS providers who historically have not had the incumbent LEC benefits of collecting access charges on a unilateral basis. Accordingly, even though RCC has been a strong proponent of "bill and keep" in the past, it now believes that "bill and keep" should not be adopted by the Commission with respect to LEC-CMRS interconnection except on a very short term basis -- i.e., no longer than 18 months and only until LECs and CMRS providers have access tariffs in place.

Rural Cellular Corporation  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline      Section      II(A)(3)      --  
                 Compensation Arrangements (Pricing  
                 Proposals)

**Compensation for Interconnected Traffic Between LECs and CMRS  
Providers' Networks -- Compensation Arrangements -- Pricing  
Proposals**

**Existing Compensation Arrangements**

RCC currently pays compensation to LECs for mobile originated calls that terminate on the LEC's wireline network. The mutual compensation requirement notwithstanding, RCC receives no compensation for terminating calls that originate on the wireline network. RCC estimates that as a result of not receiving any compensation from LECs for terminating their traffic over its cellular network, it will incur additional operating costs of approximately \$1.2 million this year, costs which by necessity must be borne by RCC's customers. Accordingly, RCC believes that the current disregard for the mutual compensation requirement is not only unjust to RCC, it does not serve the public interest.

**Interim Pricing Proposals**

**"Bill and Keep"**. For some time now, RCC has been a proponent of the use of "bill and keep" as a solution to the inefficacy of the Commission's current mutual compensation requirement.<sup>2</sup>

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<sup>2</sup> See ex parte presentation of RCC and Cellular Mobile Systems of St. Cloud General Partnership dated October 17, 1995.

However, in discussing the issues raised by the NPRM with other parties, RCC has become concerned about the potential precedential impact of any decision reached by the Commission in this proceeding. While RCC agrees with the Commission that "bill and keep" is an administratively simple solution and believes that bill and keep is in all likelihood the only interconnection pricing option capable of being implemented on an immediate basis, RCC is concerned that the interim use of "bill and keep" may lapse by default into a permanent solution. RCC is also concerned that any such decision may be viewed by the Commission as a model for developing an approach to interconnection between CMRS providers and for access charge reform. Nonetheless, if sufficient safeguards are put in place to ensure that "bill and keep" will be implemented on an interim basis only, and until carrier access billing arrangements can be negotiated between the parties (as discussed below), RCC supports the adoption of "bill and keep" to temporarily govern LEC-CMRS interconnection arrangements. Given the existing disparity between LECs and CMRS providers with respect to recovery of switching costs, immediate implementation of an interconnection pricing scheme is critical. The current competitive imbalance should not be prolonged any longer than absolutely necessary.

**Interim Alternatives and Long Term Pricing.** Each of the alternative options for an interim pricing plan discussed in the NPRM is administratively complex and unsuitable for immediate

implementation, and therefore inappropriate for an interim pricing scheme. However, from a long term as well as a short term perspective, these alternative options have other flaws as well. For example, one option posed by the NPRM would be to limit bill and keep to off-peak traffic, with charges assessed for peak-period traffic.<sup>3</sup> This option would be difficult to implement due to the divergent off peak periods for cellular and wireline traffic. Wireline peak periods occur during normal business hours, while cellular peak periods falls just outside those hours during commuting periods. Another option would apply tariffed interconnection arrangements between LECs and wireline local exchange competitors to LEC-CMRS interconnection.<sup>4</sup> In rural areas, like those served by RCC, there are no competitive access providers, and therefore no arrangements to serve as models. Another option proposed by the Commission would have interconnection rates set at some fixed percentage of the measured local service rates charged by LECs to their local customers. Such a rate would bear little relation to the cost of terminating traffic and, in any event, RCC questions whether agreement could be reached with respect to setting such a rate. The Commission also proposed an option of establishing a presumptive uniform per-minute rate for all LECs and CMRS providers.<sup>5</sup> The likely contention over how such a rate would be set essentially renders the short term

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<sup>3</sup> NPRM at paragraph 67.

<sup>4</sup> NPRM at paragraph 71.

<sup>5</sup> NPRM at paragraph 74.

viability of this option nonexistent.

One option presented by the NPRM does have some appeal as a long term approach. Under this option, a bill and keep arrangement would be imposed on a LEC pending negotiation of a mutually acceptable interconnection arrangement between the LEC and CMRS provider or the approval of cost based charges.<sup>6</sup> If negotiations break down, the Commission suggested that the dispute be resolved through the imposition of a rate equal to the lowest of various rates developed through application of some of the other alternatives posed by the Commission.

RCC believes that the concept underlying this option is a good one -- i.e., imposition of a bill and keep arrangement until carrier access billing arrangements can be implemented. However, under the suggested approach, which invokes other methods to resolve a dispute, there is no guarantee that a mutually satisfactory rate will actually be developed. Rather than resolving a protracted dispute by applying one of the flawed options discussed above, RCC suggests an alternative approach as outlined below.

Specifically, RCC suggests that "bill and keep" be used only until such time (and, in any event, no longer than 18 months) as a carrier access billing system ("CABS billing") approach can be

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<sup>6</sup> NPRM at paragraph 75.

implemented. Under such an approach, interconnection rates would be determined by a process whereby the LEC and CMRS provider exchange detailed calling records and billing information. These rates would be tariffed in the same manner as interconnection among LECs. CABS billing has been used successfully by LECs in their dealings with other LECs and IXC's. LEC-CMRS interconnection rates developed by CABS billing will be fair to both CMRS providers and LECs.

Due to the complexity of CABS billing, a period of up to 18 months will be required before such interconnection arrangements can be studied and finalized. As discussed above, due to the harmful impact to CMRS providers and their customers of the current ineffectual mutual compensation system, a "bill and keep" approach should be utilized until such time as CABS billing can be implemented.

#### **Long Term Pricing**

RCC's alternative proposal discussed above, satisfies the need for both an interim and long term approach to the pricing of LEC-CMRS interconnection.

#### **Forbearance From Rate Regulation**

In paragraph 80 of its NPRM, the Commission asks whether it should revisit its existing policy of forbearing from regulating CMRS providers' rates in order to enforce any interim policies

adopted with respect to the rates CMRS providers charge to LECs. As discussed above, there is no need for the Commission to adopt any interim or long term policy that would require oversight of particular rates for LEC-CMRS interconnection. While a few of the options presented by the NPRM might require some type of regulatory oversight of LEC-CMRS interconnection rates (e.g., establishing a uniform per-minute interconnection rate), none of these options would require full blown rate regulation. Accordingly, there is absolutely no basis for the Commission to take what would be a dramatic departure from its historical forbearance from CMRS rate regulation.

Rural Cellular Corporation  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline      Section      II(B)      --  
Implementation of Compensation  
Arrangements

**Compensation for Interconnected Traffic Between LECs and CMRS  
Providers' Networks -- Implementation of Compensation  
Arrangements**

**Negotiations and Tariffing**

RCC agrees with the FCC's tentative conclusion that information about interconnection arrangements should be made publicly available. Such public disclosure will facilitate negotiations between LECs and CMRS providers. Knowledge of the terms of other agreements should help to reduce the bargaining advantage currently held by LECs. Under the CABS billing approach proposed by RCC, LEC-CMRS interconnection arrangements will have to be tariffed and as such would be available to the public.

**Jurisdictional Issues**

The Commission asked for comment on three alternative approaches to implementing its interconnection policies. Under the first alternative, states would be expected to voluntarily follow the federal model governing interconnection arrangements for intrastate services, but there would be no mandatory requirement that they do so. Under the second approach, the FCC would adopt a mandatory federal policy framework to govern interconnection arrangements between LECs and CMRS providers with respect to both

interstate and intrastate services, but allow state commissions flexibility in implementing that framework. Under the third alternative, the Commission would adopt specific federal requirements for interstate and intrastate LEC-CMRS interconnection arrangements.

RCC urges the Commission to adopt the third approach. The Commission should adopt mandatory federal requirements applicable to both interstate and intrastate LEC-CMRS interconnection arrangements. Section 332 of the Communications Act of 1934 ("the Act"), as amended, provides the Commission with the authority to preempt state regulation of interconnection rates of CMRS providers.<sup>7</sup> The Commission may also preempt state regulation where it is physically impossible or impractical to separate the interstate and intrastate components of a call.<sup>8</sup> RCC lacks the technical capability to determine whether a call interconnecting with its network is an interstate or intrastate call. Indeed, in adopting Section 332 of the Act, Congress recognized that "mobile services...by their very nature, operate without regard to state lines."<sup>9</sup>

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<sup>7</sup> 47 U.S.C. Section 332(c)(3)(A) ("no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service...").

<sup>8</sup> Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986).

<sup>9</sup> See H.R. Rep. No. 111, 103rd Cong., 1st Sess. 260 (1993).

Preempting inconsistent state regulation with a set of mandatory federal requirements governing LEC-CMRS interconnection will help to facilitate the nationwide growth of CMRS, and thereby accelerate the advent of competition both locally and nationwide. Accordingly, the Commission not only has the statutory authority to adopt such an approach, the public interest requires it.

Rural Cellular Corporation  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline      Section      III      --  
Interconnection with IXCs

**Interconnection for the Origination and Termination of Interstate  
Interexchange Traffic**

RCC agrees with the Commission's tentative conclusion that CMRS providers should be entitled to recover access charges from IXCs when interstate interexchange traffic passes from CMRS customers to IXCs, as the LECs now do. This conclusion is entirely consistent with the concept of mutual compensation. However, notwithstanding RCC's agreement with the Commission's conclusion, RCC believes that the issue of CMRS-IXC interconnection is best dealt with in the Commission's forthcoming access reform proceeding. That proceeding is the appropriate vehicle for resolution of issues related to access charges.

Rural Cellular Corporation  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline      Section      IV      --  
Application of Proposals

### **Application of These Proposals**

Any rules adopted by the Commission in this rulemaking proceeding should apply to interconnection arrangements between LECs and all CMRS providers. There is absolutely no basis for discriminating in favor of one class of CMRS provider over another. To apply rules adopted in this proceeding only to interconnection arrangements between LECs and broadband PCS providers would not only exacerbate the historical harm already incurred by cellular carriers who have been unable to obtain the mutual compensation promised by the Commission's rulings, it would make a mockery of the notion of "regulatory parity" which forms the statutory basis for the regulation of CMRS.

Rural Cellular Corporation  
Comments  
CC Docket No. 95-185  
March 4, 1996  
Outline Section VI -- Other (Impact  
of Federal Legislation)

**Impact of Federal Legislation**

In its Supplemental Notice of Proposed Rulemaking ("Supplemental NPRM"), the Commission asked for comment on the impact of the Telecommunications Act of 1996 ("the 1996 Act") on the issues raised in the NPRM, particularly those issues related to jurisdiction. In RCC's view, the recently enacted legislation has no direct impact on the issues pending in this proceeding. The 1996 Act does not address LEC-CMRS interconnection nor does it directly address the jurisdictional issues raised by the NPRM. To the contrary, Section 253 of the 1996 Act ("Removal of Barriers to Entry") explicitly retains the applicability of Section 332(c)(3) of the Act. To delay any further the resolution of this proceeding will only result in further harm to cellular carriers such as RCC who continue to await the adoption of rules that will finally make the legal policy of mutual compensation a marketplace reality.

**Conclusion**

For the foregoing reasons, RCC respectfully requests that the Federal Communications Commission act in a manner consistent with the views expressed herein.

Respectfully submitted,

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